RESTRAINTS ON ALIENATION IN NEW YORK. — An interesting question arising under the New York Real Property Law is considered in a recent article. *Powers of Sale as Affecting Restraints on Alienation*, by Frederick Dwight, 7 Colum. L. Rev. 589 (December, 1907). Under that law it has been held that a trust is void when it is to continue longer than two lives in being if the trustee has no power to terminate the trust, though he has power to change the form of investment by sale of the *res* at any time.[1] Mr. Dwight argues that the sole basis for the common law rule against restraints on alienation is one of commercial convenience, which demands that land remain alienable so that it may come into the hands of those who will put it to the most profitable use and thereby increase the national wealth. He would give no weight to what he terms the "sentimental" theory of Professor Gray, which rests on the offense given any manly sense of justice by seeing a man enjoy a liberal income while his creditors may remain unpaid. He concludes, therefore, that under the New York law the trust in question, since it allows free transfer of the *res*, meets the true requirement of the rule against restraints on alienation and so should not have been held void.

This conclusion seems entirely correct in so far as the New York law is concerned. In the first place, since the New York statute in some cases expressly allows, even requires,[2] restraints on alienation which would have been prohibited at common law, it may well be that the "sentimental" theory, whether or not important in the common law, is not to be considered today in New York. In the second place, since the New York law does not allow the *cestui* to alienate, and yet does permit a trust like the one in question, provided the trustee has the additional power to terminate it when he pleases,[3] it would appear that certainly in this case the "sentimental" theory is not to be regarded, for the creditors cannot compel the trustee to exercise this power of termination in their favor. But in spite of this conclusion the strength of Mr. Dwight's argument by analogy to the theory of the common law seems questionable. However permissible or even necessary in many cases it may be to rely on the common law to aid in interpreting a statute, yet when, as in this case, the statutory provisions are inconsistent both with each other and with the common law, the analogy is very dangerous. Furthermore, Mr. Dwight's argument against the existence of the "sentimental" theory in the common law does not seem entirely convincing. He argues that if that theory were at the bottom of the rule against restraints on alienation, the rule would apply particularly to sane adults. It is true that the rule applies indiscriminately to sane adults, infants, and lunatics. But it may be said that the law by other well-known rules has given to these weaker classes such protection that in the situation now under discussion they may be treated like other men. And in the case of other persons who, while not insane, might yet as a matter of fact be incapable of efficiently managing their own property, here as in other situations it is against the general policy of the law to make discriminations in their favor. It is, however, not denied that the theory of commercial convenience is a very important basis for the common law rule against restraints on alienation. In fact, Mr. Dwight quotes from Professor Gray himself a sentence[4] showing the great commercial advantage of the rule. But there can be nothing novel in the co-existence of two equally important but nevertheless independent reasons for the same rule of law.

CONSTITUTION, THE TRUE — SUGGESTIONS TOWARD ITS INTERPRETATION (Continued). *Joseph Culbertson Clayton.* Contending that the federal government should have all the powers inherent in nationality not withheld by the Constitution. 15 Am. Lawyer 281.

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[1] Hawley *v.* James, 5 Paige (N. Y.) 318.
[2] N. Y. Laws of 1896, c. 547, § 83.
[3] See Williams *v.* Montgomery, 148 N. Y. 519, 526.
[4] Gray, Restraints on Alien., § 259.

CORPORATION LAW, INFLUENCE OF RAILROAD DECISIONS IN. *Richard Selden Harvey.* 15 Am. Lawyer 315.

INTENT, THEORY OF THE ADMISSION OF OTHER ACTS THAN THOSE CHARGED TO SHOW. *Anon.* 5 The Law 327.

JUSTICES OF THE PEACE, THE LIABILITY OF. *W. W. Lucas.* Classifying the cases in which justices of the peace may be liable criminally or civilly. 33 L. Mag. and Rev. 22.

LETTING AND SUBSEQUENT SALE: ESTATE AGENTS' COMMISSIONS. *J. K. F. Cleave.* 33 L. Mag. and Rev. 48. See *supra.*

LIFERENT, GIFTS OF, UNDER POWERS OF APPOINTMENT. *John S. Mackay.* Urging the adoption in Scotland of the English rule that a void remainder under a power of appointment should not invalidate an otherwise good life estate. 19 Jurid. Rev. 245.

MATRIMONIAL DOMICIL. *Anon.* 11 Bench and Bar 37. See *supra.*

METHODS FOLLOWED IN GERMANY BY THE HISTORICAL SCHOOL OF LAW. *Rudolph Leonhard.* 7 Colum. L. Rev. 573.

PATENT LAW. *Edmund Wetmore.* Advocating the creation of a patent court of appeal. 17 Yale L. J. 101.

PEACE CONFERENCE, THE SECOND. *A. H. Charteris.* Discussing, among other results of the Conference, the proposed international prize court. 19 Jurid. Rev. 223.

POWERS OF SALE AS AFFECTING RESTRAINTS ON ALIENATION. *Frederick Dwight.* 7 Colum. L. Rev. 589. See *supra.*

RAILROAD RATE REGULATION. *Herbert S. Hadley.* Discussing a method for determining when a rate is reasonable. 7 The Brief 175.

RAILWAY RATES, THE APPLICATION OF JUDICIAL REMEDIES IN THE REGULATION OF, BY PUBLIC AUTHORITY. *Fred K. Nielsen.* Contending that the Commission should be merely an advisory body. 65 Cent. L. J. 385.

SYSTEMS IN LEGAL EDUCATION. *John Wurts.* Attacking the case system for its lack of preliminary dogmatic teaching. 17 Yale L. J. 86.

TREATIES, FEDERAL, AND STATE LAWS. *Charles Noble Gregory.* A general discussion. 6 Mich. L. Rev. 25.

II. BOOK REVIEWS.

THE RULES OF PRACTICE IN THE UNITED STATES COURTS. ANNOTATED. By William Whitwell Dewhurst. New York: The Banks Law Publishing Company. 1907. pp. 775. 8vo.

In the December issue of the REVIEW, Professor Kales dolefully pictured the lack of practical equipment with which the student leaves the Harvard Law School. We wonder that he made no point of the Harvard case-book graduate's total ignorance, not only of the nature of the rules of practice, but even of their very existence. For we gratefully confess that those congeries of irritations known as Rules of Court (having all the force of laws) were kept from us by an "ideal" faculty — a jogged memory recalls faintly only Equity Rule 94. But there they are, these rules, in all their minutiæ, grim realities of practice, and we are indebted to Mr. Dewhurst for his compilation of the most extensively applicable sets of rules. The collection is not so comprehensive as its title, for it contains only the rules promulgated by the Supreme Court and the circuit courts of appeal, and does not embrace the additional rules adopted by the various district and circuit courts under § 918 of the Revised Statutes.

The old rules of the Supreme Court, and the rules revised at the December term, 1858, are given without annotations. Then follow the present Supreme Court rules; the rules of the circuit courts of appeal, formed by combining the rules of the First Circuit with the variations and additions of the other circuits; the equity rules; the admiralty rules; the rules relating to appeals from the Court of Claims to the Supreme Court; and the general orders in bankruptcy prescribed by the Supreme Court under the Act of 1898. Each of these rules is separately set forth with annotations of its history and source,